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PART II—Section 3—Sub-section (ii)

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## ELECTION COMMISSION, INDIA

### NOTIFICATION

New Delhi, the 11th August 1958

S.O. 1680.—In pursuance of the provisions of sub-rule (3) of rule 140 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956 and in continuation of the Commission's notification No. 82/5/57, dated the 12th March, 1958, published in the Gazette of India, Extraordinary, Part II, Section (3) Sub-section(ii) dated the 20th March, 1958, the Election Commission hereby publishes the judgment of the High Court of Madhya Pradesh at Jabalpur delivered on the 26th June, 1958, on the appeal filed by Shri Ramakant Keshcorao Huldurkar, General Secretary, All India Forward Bloc, Chitnavis Ganj, Chhindwara against the order dated the 15th February, 1958, of the Election Tribunal, Chhindwara in the Election Petition No. 5 of 1957.

## HIGH COURT OF MADHYA PRADESH, JABALPUR

### FIRST APPEAL No. 47 OF 1958

Ramakant Kesheorao Huldurkar, aged 42 years, General Secretary, All India Forward Bloc, Chitnavis, Ganj, Chhindwara—Appellant.

### Versus

1. Bhikulal Laxmichand Chandak, aged about 45 years, cultivator of Paradsinga, tahsil Saunsar, Distt. Chhindwara.
2. Sheonarayan Deokishan, aged about 45 years, cultivator of Paradsinga, tahsil Saunsar, Distt. Chhindwara.
3. Gourishanker son of Manoolal aged about 35 years, General Merchant, 246 Kamath Ward, Gadarwara, Distt. Narsinghpur.
4. Diwan Najafalikhan son of Sabjealikhan aged about 40 years cultivator of Seoni, Distt. Seoni.
5. Krishnarao son of Ganesh Rekhade, Advocate, Ex. M.L.A., aged about 57 years, Chhindwara.
6. Ramchandra Ambadas Joshi aged about 28 years, Budhwarpath, Poona.
7. Anandilal Narsiprasad aged about 35 years, cultivator Chapara, Tehsil, Lakhnadon, Distt. Seoni.
8. Lalsingh son of Mahendrasingh Gond, aged about 45 years, Village Gadda, P. C. Tamla, Distt. Chhindwara.

9. Sangramshah son of Ranbhirshah Gond aged about 40 years, cultivator of village Bamhand, Distt. Chhindwara.
10. Narayanrao Maniram Wadiwa Gond, aged about 45 years, cultivator of Chhindwara.
11. Shanti Swaroop Sharma son of Kartaram Sharma, aged about 37 years, Auditor with Pench Valley Coal Company Ltd., and Amalgamated Coal Fields Ltd., resident of Parasia, tehsil and Distt. Chhindwara—

#### *Respondents.*

Appeal by petitioner from the order of the Court of the Election Tribunal, Chhindwara. Presided in by Shri C. B. Kekre, dated the 15th February, 1958. in Election Petition No. 5 of 1957.

Original claim for—Calling in question the selection of Shri Bhikulal Lakhmichand Chandak from Chhindwara Parliamentary Constituency M.P., result of which election was declared on 24-3-1957 under section 98 of the Representation of the People Act.

Decreed for.....Election Petition dismissed.

Claim in appeal for—Setting aside the order passed by the Election Tribunal by declaring the election of respondent No. 1, Bhikulal Chandak, to be void and it be set aside.

Memo. of appeal presented by Shri A. P. Sen....., Counsel for appellant on 17th March, 1957.

The appeal coming on for final hearing on 23rd and 24th June, 1958 before the Honourable the Chief Justice Shri M. Hidayatullah and the Honourable Shri Justice G. P. Bhutt in the presence of Shri A. P. Sen Counsel for the appellant and of Shri Y. S. Dharmadhikari Counsel for the respondent No. 1, and of Shri P. R. Padhya, counsel for the respondent 10 and of none for other respondents the following judgment was delivered by the Court:—

#### JUDGMENT

This is an appeal under section 116A of the Representation of the People Act, 1951 (hereinafter called the Act), which is directed against the order of the Election Tribunal, Chhindwara, dismissing the appellant's election petition for declaration that the election of respondent No. 1 to the House of the People from the Chhindwara Parliamentary Constituency was void.

2. The election petition was filed by Lekhram (P.W. 4) who was an elector on the roll of the Chhindwara Parliamentary Constituency from Parasia. The Election Tribunal granted him leave under section 109 of the Act to withdraw the election petition. Thereafter, the appellant, who was respondent No. 6 in the election petition, was, on his application under section 110(3)(c) of the Act, substituted by the Election Tribunal in his place and allowed to continue the proceedings.

3. The Chhindwara Parliamentary Constituency is a double-member constituency, one of the seats being general and the other reserved for a member of the scheduled tribes. Respondents Nos. 1 to 7, respondent No. 11 and the appellant were candidates for the general seat, and respondents Nos. 8 to 10, for the reserved seat. No objections were raised to their nomination. Subsequently respondents Nos. 2 and 4, and the appellant withdrew their candidature.

4. Respondent No. 11 also filed a nomination paper for election to the State Legislative Assembly from the Parasia Legislative Assembly Constituency. An objection was raised to his nomination under section 7(e) of the Act on the ground that he held an office of profit under the Rewa Coal Fields Ltd., in the capital of which the State Government owned not less than 25 per cent share.

That objection was upheld by the Returning Officer and his nomination was rejected under section 38(2)(a) of the Act. The Returning Officer thereafter also rejected his nomination as a candidate for election to the House of the People.

5. The election of respondent No. 1 was contested on the following grounds:—

- (i) That he was guilty of corrupt practices either personally or through his agents, or through other persons with his consent;
- (ii) That the rejection of the nomination of respondent No. 11 was improper; and
- (iii) That the nomination of respondent No. 3 was improperly accepted, although he was below the statutory age limit.

The contentions regarding the corrupt practices and improper acceptance of the nomination of respondent No. 3 were not accepted by the Election Tribunal for want of evidence. These findings are not contested by the appellant. The only point for decision in the appeal is whether the nomination of respondent No. 11 was improperly rejected.

6. The case of the appellant was that the Returning Officer had at first accepted the nomination paper of respondent No. 11 for the House of the People as valid and written the word 'valid' thereon, but when he allowed the objection to his nomination as a candidate for election to the State Legislative Assembly, he changed the word 'valid' into 'invalid' and rejected his nomination paper for the House of the People which he had no power to do under the Act. On merits he denied that respondent No. 11 held any office of profit under the Rewa Coal Fields Ltd. or that the appropriate Government (in this case the Union Government) had any share in the capital of that company.

7. The Election Tribunal found that the Union Government owned more than 25 per cent share in the capital of the Rewa Coal Fields Ltd. and that respondent No. 11 held an office of profit under that company. In this view, it held that respondent No. 11 was disqualified for membership of the House of the People under section 7(e) of the Act and accordingly his nomination was not improperly rejected. It however, also held that the Returning Officer had at first accepted the nomination and consequently he had no power to reject it subsequently, but as this only amounted to non-compliance with the rules made under the Act and it was not proved that the result of the election, in so far as it concerned respondent No. 1, was affected thereby, the election petition was liable to be dismissed.

8. Before we take up this question for consideration, we would dispose of the preliminary objection that has been raised to the maintainability of the appeal. It has been contended that section 116-A of the Act, in so far as it provides an appeal from the decision of an Election Tribunal, offends Article 329 (b) of the Constitution of India, which empowers the appropriate Legislature to set up by law only one authority to decide an election dispute. In our judgment, the words "in such manner as may be provided by or under any law made by the appropriate Legislature" in Article 329 (b) are governed by the word 'except' which precedes them, and, therefore, Parliament was also competent to provide an appeal for decision of the election dispute. The preliminary objection has also no force on another ground. Since an appeal is only a continuation of the original list, the power of the Parliament, under Article 329 (b), would also extend to providing an appeal and also an authority to decide it, when it had the power to make a law for decision of an election petition by an Election Tribunal. The preliminary objection is accordingly overruled.

9. It is not in dispute that M/s Shaw Wallace & Co. are the managing agents of 3 coal companies, namely, the Pench Valley Coal Co. Ltd., the Amalgamated Coal Fields Ltd. and the Rewa Coal Fields Ltd., and respondent No. 11 was coal auditor of the first two companies. It appears from the list of payment vouchers, Ex. R-30, that he was paid his salary from the Central Office of the managing agents. W. Bright (R.W.9) is the Chief Mechanical Engineer and administrative head of the managing agents. He deposed that respondent No. 11 acted as coal auditor for the Rewa Coal Fields Ltd. and also as Labour Officer for all the three companies, when he directed him to do so. When he worked for the Rewa Coal Fields Ltd., a proportionate amount of his salary and allowances was debited to that company by the Central Office. There is, therefore, no doubt that for the services that he rendered to the said company, he made a monetary gain which would amount to 'profit' within the meaning of section 7(e) of the Act: see *Ravanna Subanna v. G. S. Kaggeerappa* (A.I.R. 1954

S. C. 653 at p. 656). It is not, therefore, necessary for purposes of this appeal to consider whether the term 'profit' should be given an extended meaning so as to include intangible benefits also. The question is whether respondent No. 11 held an office under the Rewa Coal Fields Ltd.

10. Ex. P-41 is the memorandum of association of the Rewa Coal Fields Ltd. Article 135 thereof provides that the managing agents shall have the power, and exercise the duty, to engage and dismiss managers, engineers, experts, clerks, assistants, and other servants of the company and to direct and control them, and fix and pay their remuneration. Article 136 gives them similar power to appoint and at the discretion to remove or suspend such employees, whether permanent or temporary or engaged for special services. Article 130 provides that the company shall be liable to pay salaries and commission to such of the employees who are engaged solely in the company's business and to pay such proportion of the salaries and commission of any experts employed by the managing agents partly in connection with the business of the company and partly in connection with other business, as the director may from time to time determine. Although, therefore, the engagement of the employees rested with the managing agents, they were really employees of the company which was ultimately liable to pay for their services: see *Shivanandan v. Punjab National Bank* (A.I.R. 1955 S. C. 404 at p. 410). The work of auditing is periodical in nature, so also that of Labour Officer. Since, as a part of his employment, respondent No. 11 was to work as a coal auditor for the Rewa Coal Fields Ltd. and also as Labour Officer, whenever occasion arose, it cannot be said that he did not hold any office. We, therefore, confirm the finding of the Election Tribunal that respondent No. 1 held an office of profit under the Rewa Coal Fields Ltd.

11. It is not disputed that 95400 shares of the Rewa Coal Fields Ltd., out of 135000 total shares, stood in the name of the late H. H. Sir Gulab Singh, the then ruler of Rewa. When the State of Rewa merged with the Union of India, a question arose whether these 95400 shares were the ruler's personal property or the property of the State. The Union Government claimed that all these shares were the property of the State and accordingly vested in the Government of India under Article II of the V.P. Merger Agreement. It appears from the Government of India, Ministry of Home Affairs letter, dated 25/26 July, 1957, Ex. R-75, that out of 95400 shares held in the name of the late H. H. Sir Gulab Singh 5000 shares were the property of the Bank of Baghelkhand and it was decided that the remaining 90400 shares should be divided equally between the Government of India and His Highness the Maharaja of Rewa. This letter was written by S. Narayan Swamy (R. W. 12), Deputy Secretary to the Government of India. It appears that the decision alleged in this letter was given in accordance with clause (2) of Article VII of the V.P. Merger Agreement. This dispute is taken out of the jurisdiction of the Courts of the country under Article 363 (1) of the Constitution of India. It cannot, therefore, be contended, notwithstanding any provision in the Indian Companies Act relating to the transfer of shares, that 45200 shares of the Rewa Coal Fields Ltd., do not vest in the Union Government. Accordingly the Union Government has more than 25 per cent share in the capital of that company.

12. In view of the above findings, respondent No. 11 must be held to have been disqualified for membership of the House of the People under section 7(e) of the Act. The question, however, is whether the Returning Officer had accepted the nomination of respondent No. 11 and rejected it subsequently as a result of his order on the objection to his nomination as a candidate for election to the State Legislative Assembly.

13. Ex-P-1 is the nomination paper which bears the following endorsement of the Returning Officer.

"The nomination is invalid as per order elsewhere." The prefix "in" before "valid" does appear to be subsequently added. The endorsement as a whole, however, does not indicate that it was not written in one sitting. It is, therefore, possible that while making the endorsement, the prefix "in" was inadvertently omitted and was added when the mistake was detected. There is also nothing to indicate from the evidence of the Returning Officer, B. R. Mandal (R.W. 8), that he had made the endorsement accepting the nomination, before the nomination of respondent No. 11 as a candidate for election to the State Legislative Assembly was rejected. As a matter of fact, no endorsement accepting a nomination paper, is required to be made under section 36 of the Act, unless an objection has been raised and dismissed. It does not, therefore,

appear probable that the Returning Officer would have made an endorsement recording the validity of the nomination, when there was no objection to its acceptance.

14. In the above view, no question arises as to whether the Returning Officer has power to review an order accepting a nomination, when there is no challenge to its validity. It is no doubt true that the power given to a Returning Officer under section 36(2) of the Act to examine the nomination paper and decide objections which may be made thereto is, as held in *Virinder Kumar v. State of Punjab* (A.I.R. 1956 S. C. 153), judicial in character. The question of rejecting a nomination, however, does not arise, until an objection is made or the Returning Officer otherwise comes to know of any defect or disqualification during the course of the scrutiny. The question of accepting a nomination therefore, does not require judicial consideration, until an objection is raised and rejected. In *Natwar Lal v. Bhartendra Singh* (5 E.L.R. 408), the nomination was rejected after enquiry. In that case, therefore, the question properly arose as to whether the Returning Officer had any power to review such a judicial order. No such question, however, arises in the present case where, even if the nomination paper was endorsed as valid, the question of its acceptance would not be deemed to be decided judicially. We are, therefore, of the opinion that until the question of acceptance or rejection of a nomination is decided judicially in accordance with the procedure laid down in section 36 of the Act, the Returning Officer has the power to reject the nomination till such time as the list of validly nominated candidates has not been made and affixed to his notice board under sub-section (8) thereof. The order of the Returning Officer rejecting the nomination of respondent No. 11, therefore, is not open to question.

15. In the view that we have taken, it is not necessary to consider whether, if the Returning Officer had no power to reject the nomination paper, it would be a case of improper rejection of a nomination under clause (c), or of non-compliance with the rules under clause (d) (iv), of sub-section (1) of section 110 of the Act. We are, however, of the opinion that if the Returning Officer had no such power, the case would be one of improper rejection of the nomination and not of non-compliance with the rules.

16. The result is that the appeal fails and is dismissed with costs. Hearing fee Rs. 200/- to each of the contesting respondents who put in appearance in this Court. The costs shall be paid from the amount of the security, and the balance, if any, shall be refunded to the appellant.

(Sd.) M. Hidayatullah,  
Chief Justice.  
26th June, 1958

(Sd.) G. P. BHUTT,  
Judge.  
26th June, 1958.

#### SCHEDULE OF COSTS

Particulars	Appellant.	Respdt.	Respdt.
	Applicant	No. 1 Non-appli- cant.	No. 10.
1. Court fee or m. no. of appeal and application	20-0-0	0-0-0	0-0-0
2. Court fee on power of attorney.	3-8-0	3-8-0	3-8-0
3. -do- exhibits	22-4-0	0-0-0	0-0-0
4. -do- processes	36-8-0	0-0-0	0-0-0
5. Fee Counsel's fee on Rs.	80-0-0	200-0-0	0-0-0
6. Fee for preparation of paper book	0-0-0	0-0-0	0-0-0
TOTAL	82-4-0	203-8-0	3-8-0

[No. 82/5/57.]

By Order,  
A. N. SEN, Under Secy.

